

Page 1

1 UNITED STATES BANKRUPTCY COURT

2 DISTRICT OF MARYLAND

3 CASE NO. 14-11952-DER

4 - x

5 In the Matter of:

6

7 FIRST MARINER BANCORP,

8

9 Debtor.

10 - x

11

12 U.S. Bankruptcy Court

13 101 West Lombard Street

14 Baltimore, Maryland

15

16 April 15, 2014

17 10:03 AM

18

19 B E F O R E :

20 HON. DAVID E. RICE

21 U.S. BANKRUPTCY JUDGE

22

23

24

25 ECRO - SANDY FRANK

Page 2

1 HEARING Re [15] Motion For Sale of Property under § 363(b)  
2 for (I) an Order (A) Approving Bidding and Auction  
3 Procedures with Respect to the Sale of Certain Assets, (B)  
4 Approving Bidding Protections for the Stalking Horse Bidder,  
5 (C) Approving Procedures Related to the Assumption and  
6 Assignment of Certain Executory Contracts and Unexpired  
7 Leases, (D) Approving the Form and Manner of Notices Related  
8 to the Auction and Sale, and (E) Scheduling the Sale  
9 Hearing, and (II) an Order (A) Approving Such Sale Free and  
10 Clear of Liens, Claims, Encumbrances and Other Interests and  
11 (B) Granting Related Relief. Notice Served on 2/10/2014,  
12 Filed by First Mariner Bancorp.

13

14 HEARING Re [162] Objection on behalf of RKJS Bank Filed by  
15 Richard Wasserman.

16

17

18

19

20

21

22

23

24

25 Transcribed by: Dawn South

Page 3

1 A P P E A R A N C E S :

2 KRAMER LEVIN NAFTALIS & FRANKEL LLP

3 Attorneys for the Debtor

4 1177 Avenue of the Americas

5 New York, NY 10036

6

7 BY: ROBERT T. SCHMIDT, ESQ.

8 P. BRADLEY O'NEILL, ESQ.

9

10 YUMKAS, VIDMAR & SWEENEY, LLC

11 Attorney for the Debtor

12 2530 Riva Road

13 Suite 400

14 Annapolis, MD 21401

15

16 BY: LAWRENCE JOSEPH YUMKAS, ESQ.

17

18 KIRKLAND & ELLIS, LLP

19 Attorneys for Official Committee of Unsecured

20 Creditors

21 300 North LaSalle

22 Chicago, IL 60654

23

24 BY: JEFFREY GETTLEMAN, ESQ.

25

Page 4

1 VENABLE LLP

2 Attorneys for RKJS Bank

3 750 East Pratt Street

4 Suite 900

5 Baltimore, MD 21202

6

7 BY: RICHARD WASSERMAN, ESQ.

8 MICHAEL SCHIFFER, ESQ.

9 CHRISTOPHER R. MELLOTT, ESQ.

10 JOHN B. BEATY, ESQ.

11

12 REED SMITH LLP

13 Attorneys for National Penn Bank

14 1301 K Street NW

15 Suite 1100 - East tower

16 Washington, DC 20005

17

18 BY: CLAUDIA Z. SPRINGER, ESQ.

19 PAUL J. JASKOT, ESQ.

20 TRAVIS P. NELSON, ESQ.

21 LAUREN S. ZABEL, ESQ.

22

23

24

25

Page 5

1 P R O C E E D I N G S

2 (Call to Court)

3 THE CLERK: The United States Bankruptcy Court for  
4 the District of Maryland is now in session, the Honorable  
5 David E. Rice presiding. Please be seated and come to  
6 order.

7 On the 10 o'clock docket calling the case of First  
8 Mariner Bancorp, case number 14-11952. Counsel, please  
9 identify yourselves and your clients for the record.

10 MR. O'NEILL: Good morning, Your Honor, Bradley  
11 O'Neill, Kramer Levin, on behalf of the debtor. With me are  
12 my colleagues, Robert Schmidt and Larry Yumkas, our local  
13 counsel. Also with us is the debtor's interim CEO, Mark  
14 Keidel.

15 THE COURT: Good morning.

16 (A chorus of good morning)

17 MS. SPRINGER: Good morning, Your Honor, Claudia  
18 Springer from Reed Smith on behalf of National Penn Bank and  
19 National Penn Bank shares. And with me today in court is --  
20 are my partners and colleague, Paul Jaskot, Travis Nelson,  
21 Lauren Zabel. We also have in court the CEO of National  
22 Penn Bank, Scott Fainor, and the CFO, Mike Hughes. Also in  
23 the courtroom today is Jason Reed from Jeffries, our  
24 investment banker. Thank you.

25 THE COURT: Good morning to all of you.

Page 6

1 UNIDENTIFIED SPEAKER: Good morning.

2 MR. GETTLEMAN: Good morning, Your Honor, Jeffrey  
3 Gettleman, I'm from Kirkland & Ellis, representing the  
4 committee.

5 THE COURT: Good morning.

6 MR. GETTLEMAN: Your Honor, if I could beg your  
7 indulgence. After we introduce ourselves I have a  
8 preliminary matter that I'd like to bring to the Court's  
9 attention.

10 THE COURT: Very well.

11 MR. GETTLEMAN: Thank you.

12 MR. WASSERMAN: Good morning, Your Honor, Richard  
13 Wasserman of Venable LLP on behalf of RKJS Bank, and with me  
14 today from Venable are Christopher Mellott, Mike Schiffer,  
15 and John Beaty. And we also have with us today in court Rob  
16 Kunisch who is the president of RKJS Bank.

17 THE COURT: Good morning to all of you.

18 UNIDENTIFIED SPEAKER: Good morning, Your Honor.

19 THE COURT: We are here today for resumption or  
20 continuation of the hearing on approval of a proposed sale  
21 and the objection filed by RKJS.

22 Let me say at the outset as I did yesterday, there  
23 will be no use of electronic devices by anyone who's in the  
24 gallery, that is to say behind the bar where the swinging  
25 door is. Attorneys who are on the inside of the bar may use

Page 7

1 electronic devices in connection with the prosecution of the  
2 case. There's to be no photography or recording of any of  
3 the proceedings. If parties in the gallery wish to use cell  
4 phones then they may leave the courtroom and do so in a way  
5 that's otherwise consistent with the rules of the court  
6 outside the courtroom.

7 Now, Mr. Gettlemen, you indicated there was some  
8 preliminary matter you wished to bring before the Court?

9 MR. GETTLEMENT: Yes, Your Honor.

10 So since the bid that was submitted by RKJS  
11 earlier this week the committee has conducted quite a few  
12 discussions with RKJS and with the debtor regarding this  
13 bid, and as of this morning RKJS has offered certain  
14 modifications to their bid, which is to committee's view are  
15 enhancements, and with those enhancements, Your Honor, the  
16 committee would be prepared to support the Court's  
17 resumption of the auction process.

18 Mr. Schiffer will explain the details of how the  
19 bid is changing.

20 THE COURT: All right. I think that for the sake  
21 of everyone in the fairness of the continuation of the  
22 hearing we ought to hear what those terms are so that  
23 they're on the record and then we'll take up the  
24 presentation of evidence after that.

25 Mr. Schiffer.

Page 8

1 MR. SCHIFFER: Good morning, Your Honor.

2 THE COURT: Good morning.

3 MR. SCHIFFER: To be clear for the record the bid  
4 to which Mr. Gettleman referred was the letter sent to the  
5 creditors' committee as well as the debtor on Sunday,  
6 April 13.

7 THE COURT: This is the one that Mr. Kunisch  
8 indicated yesterday on the record, RKJS indicated it was  
9 contractually bound to now.

10 MR. SCHIFFER: Correct.

11 THE COURT: Or as of yesterday.

12 MR. SCHIFFER: Correct.

13 THE COURT: Okay.

14 MR. SCHIFFER: There have been two effective  
15 modifications to that based on discussions with the  
16 creditors' committee.

17 The first is that RKJS would put up a deposit that  
18 -- of \$3 million, which would be non-refundable, except in  
19 the circumstances of a breach of the merger agreement by the  
20 debtor or the bank or a material adverse effect under the  
21 merger agreement as currently contemplated.

22 The second aspect of this is that we would agree  
23 that if we do not have regulatory approval by May 31 there'd  
24 be an automatic extension to June 30. And similarly if  
25 there's not regulatory approval by June 30 there would be an

Page 9

1 automatic extension to July 31.

2 For clarity in each case RKJS would continue to  
3 suffer the risk of bank losses during that time frame,  
4 meaning that there would be no purchase price adjustment  
5 based on the capital of the bank through that time period.

6 The further caveat to the offer and agreement with  
7 the creditors' committee is that the creditors' committee  
8 would continue to support the RKJS offer as revised,  
9 assuming that based on the auction procedures as outlined  
10 yesterday in the spreadsheet, at the end of the day the RKJS  
11 bid is dollar value in excess of the Nat. Penn bid after the  
12 resumed auction, meaning that no discount would be applied  
13 to the RKJS bid amount based on either regulatory risk or  
14 investor risk as was outlined yesterday, and that all other  
15 discounts that were discussed yesterday and included in the  
16 spreadsheet would continue to be applied, as well as the  
17 \$200,000 extra premium applied to the RKJS willingness to  
18 remove the purchase price adjustment.

19 THE COURT: Is this development, let's call it,  
20 something that the rest of the parties in the courtroom know  
21 about or is it being announced for the first time to them  
22 right now?

23 MR. SCHIFFER: We announced it to debtor's counsel  
24 admittedly 10 minutes ago as the agreement was reached 20  
25 minutes ago, and Nat. Penn's counsel, at least I've not had

Page 10

1 a chance to relay it to them, I doubt anyone has.

2 THE COURT: All right.

3 MR. SCHIFFER: If I could just --

4 THE COURT: Yes, you may.

5 (Pause)

6 MR. SCHIFFER: Nothing else.

7 THE COURT: All right, thank you.

8 Does the debtor or National Penn want to have some  
9 period of time to absorb what's just been said or do you  
10 wish to do something different in terms of the course of  
11 these proceedings in light of this development? I just want  
12 to make sure we understand where we're going from here.

13 MR. SCHMIDT: Good morning, Your Honor, for the  
14 record Robert Schmidt, Kramer Levin Naftalis & Frankel for  
15 the First Mariner Bancorp.

16 As Mr. Schiffer correctly pointed out we did learn  
17 of this development in the hallway basically, you know,  
18 walking in, so we really haven't had a chance to digest  
19 these changes and what the impact might be to the process.

20 So we do think it would be worthwhile if we could  
21 take a -- hopefully a very short break just for me to  
22 discuss it with the management team and our other advisors.

23 THE COURT: All right, let's take a ten-minute  
24 recess.

25 THE CLERK: All rise. The Court is in recess.

Page 11

1                   (Recess at 10:12 a.m.)

2                   THE CLERK: The United States Bankruptcy Court for  
3 the District of Maryland now resumes its regular session.

4                   THE COURT: I think we left off with the debtor  
5 wanting to advise the Court after caucusing in the hallway  
6 or whatever what's the status of things from the debtor's  
7 perspective here?

8                   MR. SCHIFFER: Thank you, Your Honor. Again,  
9 Robert Schmidt for the record.

10                  Your Honor, we took the time to, you know, caucus  
11 internally amongst the professionals who are here on behalf  
12 of the debtor and we are in the process of arranging either  
13 a call of our board subcommittee to consider this revised  
14 proposal on the committees' position, which we're hoping to  
15 have at either 11:15 or 11:30. Probably more likely 11:30.

16                  THE COURT: All right. Then what would you  
17 propose we do in the meantime?

18                  MR. SCHMIDT: Well, it had originally been my  
19 suggestion, Your Honor, that the -- as I understand process  
20 wise the next witness that was going to be on would have  
21 been from Nat. Penn. I think discussing with Ms. Springer I  
22 think their position is -- or their preference is not to go  
23 forward with that witness until they know where the debtor's  
24 position is on this development.

25                  THE COURT: I see. All right. Is that correct,

Page 12

1 Ms. Springer?

2 MS. SPRINGER: Yes, Your Honor, that's correct.

3 THE COURT: All right. Does anybody else wish to  
4 be heard on this request, which I take to be a request that  
5 we continue this hearing until some time after the debtor  
6 has had the opportunity to have this board meeting, correct?

7 There being no opposition to that the Court could  
8 resume at 1 o'clock. I think that would give -- unless  
9 you're anticipating a lengthy meeting -- that would give you  
10 an opportunity have the meeting, confer, perhaps get a bite  
11 of lunch, and get back here at 1 o'clock.

12 MR. SCHMIDT: Your Honor, I think, you know,  
13 1 o'clock would be more than sufficient. I can't imagine it  
14 going longer.

15 THE COURT: All right. Then we will resume at  
16 1 o'clock. Thank you all.

17 MR. SCHMIDT: Thank you, Your Honor.

18 THE CLERK: All rise. Court is in recess until  
19 1 p.m.

20 (Recess at 10:47 a.m.)

21 THE CLERK: The United States Bankruptcy Court for  
22 the District of Maryland now resumes its regular session.  
23 The Honorable David E. Rice presiding. Please be seated and  
24 come to order.

25 Recalling the case of First Mariner Bancorp, case

Page 13

1 number 14-11952. Counsel, please identify yourselves and  
2 your clients for the record.

3 MR. SCHMIDT: Good afternoon, Your Honor, Robert  
4 Schmidt and Bradley O'Neill from Kramer Levin Naftalis &  
5 Frankel, along with Larry Yumkas, our co-counsel.

6 THE COURT: Good afternoon.

7 MS. SPRINGER: Good afternoon, Claudia Springer,  
8 Reed Smith for National Penn Bank, with my colleagues, same  
9 colleagues as this morning.

10 THE COURT: Good morning to you -- or good  
11 afternoon to you.

12 MR. GETTLEMAN: Good afternoon, Your Honor,  
13 Jeffrey Gettleman from Kirkland & Ellis representing the  
14 creditors' committee.

15 THE COURT: Good afternoon.

16 MR. WASSERMAN: Good afternoon, Your Honor,  
17 Richard Wasserman, Venable LLP on behalf of RKJS Bank. With  
18 me this afternoon is Mr. Mellott, Mr. Schiffer, and  
19 Mr. Beaty, along with our client, Bob Kunisch, who's the  
20 president of RKJS Bank.

21 THE COURT: Good afternoon to all of you.

22 Well we are reassembled in this case. We were  
23 awaiting I suppose a report from debtor's counsel on what  
24 development, if any, there is as a result of the board  
25 meeting.

Page 14

1 MR. SCHMIDT: Yes. Good afternoon, Your Honor.

2 Again, Robert Schmidt, Kramer Levin Naftalis & Frankel.

3 We certainly want to thank Court for extending the  
4 -- or giving the adjournment to allow us to assemble our  
5 board, which we were able to do telephonically largely.

6 the board was brought up to speed as to the  
7 developments of this morning, we invited the advisors for  
8 the creditors' committee to make a presentation during that  
9 call, which they did, and after substantial deliberation,  
10 you know, the board authorized management to agree to  
11 basically support the committees' position, and you know,  
12 agree that the auction should be reopened to entertain the  
13 enhanced RKJS bid on the terms described by Mr. Schiffer on  
14 the record this morning.

15 And so that's kind of where we are, and we look  
16 procedurally to the Court as to, you know, how we'd like to  
17 proceed with the rest of the proceedings.

18 THE COURT: Well it seems to me I'm going want to  
19 hear from Ms. Springer, but before I do are you proposing  
20 anything in particular?

21 MR. SCHMIDT: No, Your Honor, not particular. I  
22 agree, you know -- you know, we certainly need to, you know,  
23 hear from counsel for Nat. Penn and anybody else for that  
24 matter that wants to be heard. But, you know, we're  
25 prepared to, you know, proceed forward with a reopened

Page 15

1 auction I guess at a time and place to be determined.

2 We haven't had a chance to consult with

3 Mr. Wasserman on that particular aspect of things or anybody  
4 else for that matter.

5 THE COURT: I see. All right.

6 MR. SCHMIDT: Thank you.

7 THE COURT: Well let's hear from others.

8 Ms. Springer?

9 MS. SPRINGER: Thank you, Your Honor.

10 As we stated earlier I think and made pretty clear  
11 National Penn Bank will decline to participate in any  
12 reopened auction, and in fact if the auction is reopened we  
13 will withdraw our -- our last bid. So that is the decision  
14 of National Penn Bank.

15 THE COURT: Well, all right, I understand what  
16 you're saying. It seems to me you have three choices. You  
17 can -- putting aside the unusual procedural circumstances  
18 that we all find ourselves in here -- everyone else in the  
19 courtroom is apparently in favor of reopening the auction  
20 and permitting consideration of this new enhanced bid from  
21 RKJS, and it seems to me that you and your client have one  
22 of three choices.

23 You can -- you can press on with your case trying  
24 to, in light of this collected position, have the Court  
25 nevertheless approve sale to your client.

Page 16

1           You can agree that the auction be reopened and  
2 participate in the bidding. I certainly think that if the  
3 auction is going to be reopened and the bid of RKJS is to be  
4 considered that your client should have an opportunity to  
5 bid. This can't be the end of the bidding. But they're not  
6 obligated to make another bid, and if your client is -- has  
7 decided they're not going bid then I guess the Court needs  
8 to -- I'm looking to you I guess for guidance. I'm happy to  
9 take a recess if you want to consult with your client.

10           MS. SPRINGER: Your Honor --

11           THE COURT: It seems to me if you want to -- if  
12 you don't want to press a case for approval of your bid and  
13 you're going to acquiesce in the auction being reopened and  
14 then in effect withdraw your bid and not bid against this  
15 latest bid from RKJS, then it seems to me you might as well  
16 just say so. It seems to me you have to do one or the  
17 other.

18           MS. SPRINGER: From a procedural standpoint, Your  
19 Honor, we -- the motion is the debtor's motion, and the  
20 debtor is now I believe saying that they are in so many  
21 words withdrawing this motion.

22           So I don't really from a procedural standpoint  
23 understand how we, not being the debtor or the committee,  
24 can procedurally push forward our bid that now has been  
25 essentially rejected by both the debtor and the creditors'

Page 17

1 committee.

2           Obviously, you know, had the debtor made a  
3 different decision our decision would have been to stick by  
4 our bid, because that's what we committed to do, but now the  
5 -- you know, there has been a -- a wholesale shift in what  
6 the debtor and the committee want to do, they want to reopen  
7 the auction. Our view is the auction ended on Thursday  
8 evening, at that time we were declared by the debtor at  
9 least and the committee I believe to be the best offer, now  
10 their minds have changed, and it is not our intention to go  
11 back and resume bidding, and we just don't want to be a part  
12 of it anymore if that's going to be Your Honor's decision.

13           And, you know, we are not inclined to stick with  
14 our last bid, we just want to withdraw if that's going to be  
15 the decision of this Court.

16           THE COURT: I see. All right. Thank you.

17           MS. SPRINGER: Thank you.

18           THE COURT: Mr. Wasserman?

19           MR. WASSERMAN: Your Honor, Richard Wasserman for  
20 RKJS Bank.

21           We're fully supportive of the debtors' position  
22 that going back to the auction, but if as Ms. Springer has  
23 just said to the Court on behalf of Nat. Penn that they want  
24 to withdraw that's fine too. And our position I think would  
25 be, Your Honor, I think we should take a brief recess, but

Page 18

1 would be -- if that's the case, if Your Honor is so to rule,  
2 that we'd like to get approval of this enhanced bid today.  
3 We're all here, we're the only bid, the only offer, and we  
4 shouldn't delay it because we do want to move forward with  
5 the regulatory approval as promptly as possible if we're the  
6 only one who's a viable bidder.

7 So we'd like to take a brief recess and come back,  
8 Your Honor, and put on the case to get that enhanced bid  
9 approved by the Court today.

10 THE COURT: I see.

11 Mr. Schmidt, how do you respond to what  
12 Mr. Wasserman said?

13 MR. SCHMIDT: Firstly, Your Honor, I'd just like  
14 to respond to something that Ms. Springer said. I don't  
15 believe it is the fact that we are withdrawing any motion, I  
16 think the sale motion is still what's on the calendar for  
17 today so it certainly hasn't been withdrawn.

18 This is technically acquiescing to RKJS's motion  
19 at the strong suggestion and request of the creditors'  
20 committee who are the economic fiduciaries, we are  
21 fiduciaries for them, they are the economic party in  
22 interest, and you know, they strongly believe that the  
23 enhanced RKJS bid is the right approach.

24 I think it does make sense to take a recess of  
25 that, you know, we can actually iron out procedurally how we

Page 19

1 think we should be going forward, especially in light of  
2 Ms. Springer's comments as to what Nat. Penn's position is.

3 THE COURT: You need to consult with Mr. Wasserman  
4 for a moment?

5 (Pause)

6 MR. SCHMIDT: Well, I guess Mr. Wasserman is  
7 suggesting that we get a full ruling from the Court on -- I  
8 guess on his motion before we hop to the next step or  
9 process going forward.

10 THE COURT: His objection and request that the  
11 bidding be reopened.

12 MR. SCHMIDT: Correct.

13 THE COURT: Okay. All right. Ms. Springer, is  
14 there any objection to the Court proceeding in that fashion?  
15 I mean you've indicated to me that you don't want to press  
16 your case standing along and your client doesn't want to  
17 bid, so what is your objection, if you have one, to this  
18 approach?

19 MS. SPRINGER: Well, Your Honor, I don't know what  
20 to really say here. It's quite unusual for a bidder -- I  
21 mean unless we object to the current bid I suppose that's on  
22 the table that the debtor has now chosen to support and the  
23 committee has chosen to support I don't think we have the  
24 right to simply unilaterally say that our bid should be  
25 accepted.

Page 20

1           So, you know, I don't have an objection to Your  
2 Honor ruling on their objection at this point.

3           You know, obviously there's been a dramatic shift  
4 in what happened over the past couple of hours and the  
5 debtor and the committee have made up their minds I suppose,  
6 and so as far as we're concerned they've now -- they're now  
7 choosing to go with a different bidder, and you know, that  
8 is their choice I suppose.

9           THE COURT: All right, fine. Thank you.

10          I have considered all that's been said here today  
11 as well as the evidence that was presented yesterday, and  
12 frankly based on the evidence that was presented yesterday I  
13 think that there was ample grounds upon which the Court  
14 could, and I do sustain the objection and rule in favor of  
15 the RKJS motion asking that the Court reopen the auction in  
16 this case.

17          It's very clear to me from reading the cases that  
18 were referred to the Court in the objection filed by RKJS  
19 that there's ample authority for the Bankruptcy Court to  
20 bring its own independent judgment to bear and try to strike  
21 a balance between the auction process, the finality of that  
22 process, and the need to entertain offers and bids that are  
23 going to realize the most that can be obtained for the  
24 benefit of the bankruptcy estate.

25          And I find from all of the evidence here that this

Page 21

1 is such an appropriate circumstance in that the bidding  
2 should be reopened for the purpose of entertaining the new  
3 enhanced bid that's been stated on the record over the  
4 course of the last 24 hours or so by RKJS.

5 I do that -- I don't suggest for a minute that  
6 there's been anything done in bad faith or in any  
7 inappropriate way by either of the bidders. I think that  
8 the participation here by everyone has been in good faith  
9 and that the conduct of the auction, together with the  
10 recent developments of the enhanced bid from RKJS and the  
11 fact that the committee and the debtor now believe that the  
12 enhanced bid of RKJS is the superior one and they want the  
13 Court to entertain it, all of that is grounds in my mind for  
14 the Court to reopen the bidding.

15 I rely in particular, although not exclusively, on  
16 the decision of the Second Circuit Court of Appeals in  
17 Financial News Network, a case reported at 980 F.2d 165 in  
18 1992, and the subsequent cases that are analyzed by the  
19 bankruptcy judge in New Mexico in the decision -- it's an  
20 unreported decision that Mr. Wasserman directed the Court to  
21 yesterday -- In re: Sunland, Inc., I realize it's  
22 unreported, but that case -- in that case the bankruptcy  
23 judge goes through an analyze in a decision that was  
24 rendered on March 25th of this year with respect to the  
25 applicable law and the discretion of the Court in

Page 22

1 appropriate circumstances, which I find to be the case here  
2 to reopen bidding.

3 So I'm going reopen bidding, I'm going direct the  
4 parties to wherever they choose to do so in the next  
5 15 minutes to confirm that what this bid is that has been  
6 made by RKJS, confirm that in fact that Nat. Penn has  
7 decided not to bid any further, and then report back to the  
8 Court as to what the status of the auction is. And if the  
9 winning bidder is, as seems to be predicted by what's  
10 happened so far, RKJS, then we will proceed with the hearing  
11 on approval of that sale immediately.

12 Any questions or anything else we need to take up  
13 at this point? Fifteen minutes do it?

14 MR. SCHMIDT: It should, Your Honor.

15 THE COURT: All right, 15-minute recess.

16 THE CLERK: All rise. The Court is in recess.

17 (Recess at 1:14 a.m.)

18 THE CLERK: The United States Bankruptcy Court for  
19 the District of Maryland now resumes its regular session.

20 THE COURT: All right, Mr. Schmidt, I think you  
21 were at the podium with a report on what has happened in the  
22 reopened auction.

23 MR. SCHMIDT: Yes, Your Honor, Robert Schmidt,  
24 Kramer Levin Naftalis & Frankel on behalf of First Mariner  
25 Bancorp.

Page 23

1           We did have an opportunity to consult with both  
2 Nat. Penn Bank and with RKJS during the break. Nat. Penn  
3 Bank confirmed that they would not be bidding any further at  
4 this point in time, and I don't believe they're in the  
5 courtroom at this point in time, so we did discuss with  
6 Mr. Wasserman and his colleagues how to -- how we thought  
7 best the proceed.

8           I think it makes sense, you know, at this point in  
9 time to ask Mr. Wasserman or one of his colleagues to  
10 reconfirm, you know, on the record in terms of their last  
11 bid, and then in open court ask if there is any other party  
12 who might be interested in further bidding or trying to top  
13 that bid, and then proceed to move on to a sale approval  
14 process.

15           THE COURT: That sounds fine to me unless there's  
16 some objection from any party in the courtroom. Appears  
17 there's no objection, so we'll turn it over to you,  
18 Mr. Wasserman.

19           MR. WASSERMAN: Thank you, Your Honor. Richard  
20 Wasserman for RKJS Bank.

21           Your Honor, I think we thought the best way to do  
22 this is yes, first I am reconfirming that RKJS Bank is  
23 standing by the bid that it earlier submitted and described  
24 to Your Honor, but for the record I think it would be  
25 helpful if Your Honor still has the exhibit book that we

Page 24

1 were using for the hearing, there was an exhibit that was  
2 not introduced in evidence during the testimony portion of  
3 the hearing, which is Exhibit 5, and I'd like to move into  
4 evidence Exhibit 5, which is the offer bid that RKJS  
5 submitted on April 13th. And we'd like to as the first step  
6 in putting together the bid of RKJS would be that letter,  
7 Your Honor. It has attached to it, among other things, a  
8 marked up purchase agreement, but I think if we have that in  
9 evidence that's a good basis to then start to confirm the  
10 rest of the --

11 THE COURT: All right, just a minute. Madam  
12 clerk?

13 (Court confers with clerk)

14 THE COURT: Is there any objection to the  
15 admission of RKJS Exhibit 5? Hearing none that exhibit --

16 MR. SCHMIDT: Your Honor, no objection, but just  
17 to be clear, this is a mark up of the APA that was  
18 submitted, it is still being reviewed and will need to be  
19 supplemented with the revised revisions to the bid that were  
20 made to that.

21 THE COURT: Understood.

22 MR. SCHMIDT: Thank you, Your Honor.

23 MR. WASSERMAN: Thank you, Mr. Schmidt.

24 THE COURT: But it's admitted.

25 (RKJS Exhibit No. 5 was admitted)

Page 25

1 MR. WASSERMAN: Thank you, Your Honor.

2 Okay. What I was going to say with that admitted,  
3 Your Honor, then I would say that the balance of the RKJS  
4 bid, consistent with the discussions --

5 THE COURT: Just so we're clear, this Exhibit 5 is  
6 the one that Mr. Kunisch I think stated on the record  
7 yesterday that RKJS agrees it's bond by --

8 MR. WASSERMAN: Stands by -- stands by that --

9 THE COURT: -- and that it's been subsequently  
10 amended by what Mr. Schiffer said earlier today.

11 MR. WASSERMAN: Yes, Your Honor, that's exactly  
12 where I was going to go.

13 THE COURT: Which is what you're about to tell us.

14 MR. WASSERMAN: Excuse me?

15 THE COURT: Which is what you're about to tell us  
16 about that.

17 MR. WASSERMAN: Exactly, Your Honor.

18 THE COURT: Okay. Go ahead.

19 MR. WASSERMAN: But it is the same one that  
20 Mr. Kunisch yesterday did confirm we were standing by.

21 THE COURT: Okay, good.

22 MR. WASSERMAN: Okay. So we have that.

23 And then the addition to the now final bid of --  
24 and successful bid of RKJS are the representations that  
25 Mr. Schiffer made earlier today as to the additional

Page 26

1 elements that were agreed to with the committee and then  
2 ratified by the debtor as well earlier today. So those  
3 would form the additional provisions of the successful bid  
4 that we would hope to then present to Your Honor for  
5 approval today.

6 What we are going to suggest is that if we can get  
7 approval from Your Honor what we would do, we would attach  
8 to the sale approval order a copy of the agreed document  
9 after all parties have had a chance to look at the final  
10 revisions. So what would be submitted, Your Honor, would  
11 not be a document that the parties are still debating or  
12 have a problem with, it's the one that's agreed as being the  
13 final order.

14 It was asked in some of our discussions what the  
15 actual purchase price is, and I think that's helpful for the  
16 record just to state that.

17 If Your Honor goes to 2.02(a) of the mark up, and  
18 this has been verified by the debtor's financial advisor as  
19 well, so I think all parties are in agreement as to this,  
20 which is the purchase price section, Your Honor.

21 THE COURT: Yes.

22 MR. WASSERMAN: Okay. The agreed purchase price  
23 with the adjustments we've talked about, the additional  
24 dollars, the \$4 million additional is 17,725,949. And as  
25 you will read on in that paragraph, Your Honor, there's a

Page 27

1 provision that allows that to be increased by an additional  
2 million dollars, so in effect the four goes five, if  
3 regulatory approval as defined in the agreement is not  
4 obtained by RKJS by April 30th. So that would be an add on  
5 to the purchase price in the event there is not regulatory  
6 approval by April 30.

7 THE COURT: All right.

8 MR. WASSERMAN: Maybe Mr. Schmidt will want to  
9 confirm that that is the understanding of the debtor as  
10 well.

11 MR. SCHMIDT: Yes, Your Honor, that's our  
12 understanding.

13 THE COURT: All right, very good.

14 MR. WASSERMAN: Okay. Unless anyone has any  
15 further questions I think that's where we are, Your Honor.

16 THE COURT: All right. Well, I think I understand  
17 that.

18 Mr. Schmidt, I think you wanted me to ask so I do  
19 so on the record, is there anyone in court today who wishes  
20 to be heard for the purpose of proposing a bid to compete  
21 with and arguably be a higher and better bid than the one  
22 that's just been announced on the record by RKJS?

23 Let the record reflect there's no response, so we  
24 have this bid before the Court, no one wishes to bid against  
25 it, and we can proceed with a hearing on approval of this

1 proposed sale.

2 Mr. Schmidt.

3 MR. SCHMIDT: Yes, Your Honor. With no objections  
4 to the sale I think we should be able to proceed fairly  
5 expeditiously in light of the record that was put before the  
6 Court yesterday.

7 We would like to take maybe a very short break to  
8 consider whether or not we want to put in an evidentiary  
9 proffer based on the developments of this morning and the  
10 board meeting that was conducted. I don't think we need  
11 more than 10 or 15 minutes at most, not even that.

12 THE COURT: All right. Well, let's take a ten-  
13 minute recess.

14 MR. SCHMIDT: Thank you.

15 THE CLERK: All rise. Court is in recess.

16 (Recess at 1:52 p.m.)

17 THE CLERK: Please remain seat and had come to  
18 order. The United States Bankruptcy Court for the District  
19 of Maryland now resumes its regular session.

20 THE COURT: All right, Mr. Schmidt, I think we're  
21 here for resumption of the hearing and approval of the  
22 proposed sale.

23 MR. SCHMIDT: That's correct, Your Honor. For the  
24 record Robert Schmidt, Kramer Levin Naftalis & Frankel on  
25 behalf of First Mariner Bancorp.

Page 29

1           Your Honor, in light of the developments of this  
2 morning with respect to the revised RKJS bid we thought it  
3 appropriate to supplement the record by -- by putting in  
4 some additional testimony by way of proffer from Mark  
5 Keidel, the debtor's interim CEO.

6           THE COURT: All right, I have no objection to  
7 proceed in that fashion unless somebody in the courtroom  
8 wishes this witness to be called and sworn in. Doesn't  
9 appear to be the case.

10          Very well, we'll swear him in if I have any  
11 questions or if it proves necessary to cross-examine him for  
12 some reason, but you may proffer his direct testimony.

13          MR. SCHMIDT: Certainly. Thank you, Your Honor.

14          Your Honor, if called to the stand Mr. Keidel  
15 would testify that at the beginning of today's hearing on  
16 the debtor's sale motion the committee announced that it and  
17 RKJS had negotiated several enhancements to the terms of the  
18 proposal that RKJS had previously submitted to the Court and  
19 to the various parties in interest on April 12th.

20          Mr. Keidel would testify that after that  
21 announcement the debtor's professionals and executives  
22 conferred and convened a telephonic meeting of the debtor's  
23 board of directors, which took place at approximately 11:30  
24 this morning.

25          At that meeting the debtor's professionals undated

Page 30

1 the board on the status of the hearing of the sale motion,  
2 of the various changes to the proposed RKJS bid, the  
3 committee's change of position with respect to its previous  
4 approval of the Nat. Penn bid, and you know, further advice  
5 concerning the legal and financial implications of this  
6 change of events.

7 Mr. Keidel would testify that the board also  
8 considered the presentation from the legal and financial  
9 advisors to the creditors' committee concerning the basis  
10 for the committees' change in position and satisfaction with  
11 the enhancements negotiated to the revised RKJS bid.

12 Thereafter the members of the board asked a number  
13 of questions of their advisors and intensively discussed the  
14 issues raised by the revised bid and the proceedings at this  
15 hearing in this case to date.

16 Mr. Keidel would testify that at the conclusion of  
17 that discussion in the exercise of their business judgment  
18 and their recognition of First Mariner's fiduciary duties to  
19 its creditor constituency the board unanimously determined  
20 to support the RKJS motion to reopen the auction and to  
21 support the revised RKJS bid as the highest and best bid  
22 received to date.

23 And that would conclude the evidentiary proffer,  
24 and Mr. Keidel is obviously in court and available to cross-  
25 examine and/or questions from the Court.

Page 31

1           THE COURT: Does anyone wish to cross-examine the  
2 witness?

3           MR. WASSERMAN: Your Honor, one moment?

4           THE COURT: All right.

5           MR. SCHMIDT: Mr. Wasserman correctly points out  
6 that I referred to the proposal as April 12th, it was  
7 actually April 13th, although I must admit the days and  
8 nights have been a little bit blurry.

9           THE COURT: I understand. There being no request  
10 for cross-examination there's no need to swear the witness  
11 in, I have no questions for him.

12           Anything else in support of the sale?

13           MR. SCHMIDT: Nothing by way of evidence, Your  
14 Honor, certainly one or two closing comments, and then also  
15 a comment that we've largely ignored that the DIP motion  
16 also has been rolling along conterminously with the sale  
17 motion, and I would note that I just wanted to confirm for  
18 the record, and Mr. Wasserman I believe is willing to  
19 confirm, that the RKJS DIP remains in place and in full  
20 force and effect as a result of presumably being declared as  
21 the successful bidder. There will not be a need to make any  
22 changes to that DIP.

23           I would note, as Mr. Brody noted at the bid  
24 procedures hearing, that you know, we had agreed previously  
25 with the committee not to draw on that DIP until the

Page 32

1 occurrence of the sale hearing, and now that this hearing  
2 has occurred it is our current intent to draw down the DIP  
3 in the next day or two or three.

4 THE COURT: All right. Before we get to any sort  
5 of closing comments is there anyone else in the courtroom  
6 who wishes to present evidence in connection with the  
7 debtor's motion for approval of the proposed sale to RKJS?  
8 There's no response.

9 All right, I'll hear closing comments and  
10 arguments from counsel.

11 MR. WASSERMAN: Yes, Your Honor. I didn't know if  
12 the request for evidence, Your Honor, included my just  
13 responding to Mr. Schmidt's comment on the DIP, but I'm  
14 certainly willing to confirm on the record that in fact the  
15 DIP is in place, there have been no draws. I would  
16 certainly request there not be any draws entered until the  
17 Court order is entered, which we hope will be in the next  
18 day or two. But with that RKJS is standing by with the DIP  
19 facility.

20 THE COURT: All right, I understand.

21 Mr. Schmidt.

22 MR. SCHMIDT: And I can confirm that it's not our  
23 intent to make a draw until the sale order is in fact  
24 entered.

25 THE COURT: All right. So I'll hear your argument

Page 33

1 for how this adds up to grounds for the Court to approve  
2 what you're asking the Court to approve today.

3 MR. SCHMIDT: Certainly, Your Honor, and I'll try  
4 to be brief since it's been a long stretch.

5 Your Honor, as I said during my opening remarks  
6 the debtor was very fortunate to have two strong bids from  
7 sophisticated parties represented by experienced bankruptcy  
8 and regulatory advisors.

9 The auction process certainly took some  
10 interesting twists and turns, but we believe it was  
11 ultimately highly successful, it achieved an economic result  
12 of (indiscernible - 00:06:15 - last audio file) percentages,  
13 but well in excess of 500 percent of the original stalking  
14 horse price, all of which will -- or the vast majority of  
15 which will go directly to the debtor's creditor constituency  
16 which was looking at the time at a fairly bleak recovery,  
17 now we think the odds of a decent recovery are substantially  
18 enhanced.

19 Your Honor, as indicated in the evidentiary -- the  
20 live testimony and the proffers the debtor's board and  
21 senior management exercised in our view extraordinary  
22 reasonable business judgment in evaluating the various bids,  
23 in orchestrating and running the bid process, conducting and  
24 leading board deliberations, and ultimately reaching the  
25 conclusions that it reached along the way.

1           You know, we think there's ample evidence in the  
2 record now to support your finding that the bid is -- the  
3 current RKJS bid is the highest and best bid, that this was  
4 an arms length transaction, that all parties acted in good  
5 faith, and you know, we believe, you know, with that, you  
6 know, that the Court should be able to approve the sale and  
7 hopefully we'll be able to get the documentation squared  
8 away and submitted to the Court at a reasonable hour  
9 tomorrow so that the order can be promptly entered.

10           I'd like to just, you know, say that during the  
11 course of this process, in particular Mr. Kidel and various  
12 senior managers went above and beyond to manage the sale  
13 process. As I said, the process took a lot of twists and  
14 turns, it entailed a lot of late nights, and you know,  
15 ultimately we're optimistic that this transaction will get  
16 closed quickly and efficiently, and that you know, First  
17 Mariner will once again return to a well-capitalized status  
18 and a well-capitalized Baltimore bank that will be poised  
19 for growth in the future.

20           Again, we hope to get the closing quickly. We  
21 wish the RKJS team lots of success and good luck in moving  
22 this process forward. We'll ultimately be working arm and  
23 arm with them to get this closed as quickly and efficiently  
24 as possible and at the same time move this case along to a  
25 -- to an ultimate hopefully prompt and successful

1 conclusion.

2 THE COURT: Thank you.

3 Anything from the creditors' committee?

4 MR. GETTLEMAN: Your Honor, just -- Jeffrey  
5 Gettleman from Kirkland & Ellis representing the creditors'  
6 committee. Just very briefly, Your Honor.

7 We did not file any objection to the sale as it  
8 was originally presented. Whatever issues we had with the  
9 various documents were negotiated with the parties and  
10 resolved to our satisfaction.

11 You know, we also believe, you know, we're pleased  
12 with the result, and it came after, you know, continuous  
13 consultation with the debtor, which we appreciate, and I  
14 think I don't need to say anything other than the committee  
15 wholeheartedly approves the sale.

16 THE COURT: Thank you.

17 MR. GETTLEMAN: Thank you.

18 THE COURT: Mr. Wasserman, it looks like you might  
19 have the last word here.

20 MR. WASSERMAN: Thank you, Your Honor.

21 I think I speak on behalf of all counsel, we want  
22 to thank Your Honor also for the patience with putting up  
23 with lots of breaks during these proceedings, and we very  
24 much appreciate the Court's supervision of the process.

25 I did want to just make just a couple comments I

Page 36

1 think that Mr. Schmidt mentioned.

2                 The form of sale approval order, we're going use  
3 the one that was attached to the motion, that'll be the  
4 basis of it. You know, it'll be revised as need be based on  
5 the developments since. And I think Mr. Schmidt laid the  
6 ground work that we believe that the purchaser will be a  
7 good faith purchaser under 363(m) with the protections  
8 attended thereto, that this is a sale free and clear under  
9 363(f), all that's been put forth in the papers, Your Honor,  
10 that have been submitted and will be contained in the sale  
11 approval order that would be presented to Your Honor as  
12 Mr. Schmidt said hopefully by tomorrow.

13                 THE COURT: All right, thank you.

14                 MR. WASSERMAN: Unless Your Honor has any further  
15 questions I don't have anything further.

16                 THE COURT: I have no questions. Thank you.

17                 MR. WASSERMAN: Thank you.

18                 THE COURT: I've considered the evidence, the  
19 arguments, and as Mr. Schmidt says, it certainly has been an  
20 eventful two days. The outcome I think is definitely a good  
21 economic result for this bankruptcy estate.

22                 I appreciate all the hard work of counsel that's  
23 gone into this case and the efforts of the two prospective  
24 purchases. As I said earlier, I think both purchasers  
25 proceeded in connection with this case in good faith and

1 ultimately RKJS is the one that has prevailed.

2 I believe the circumstances of this case and the  
3 facts before the Court are more than ample and appropriate  
4 for me to make a finding -- the findings necessary to  
5 approve the sale of the assets to RKJS as has been proposed  
6 as modified and enhanced today pursuant to Section 363(f),  
7 and to approve the debtor in possession financing loan.

8 I am prepared to entertain an appropriate order in  
9 chambers as soon as it can be -- a draft can be completed  
10 and uploaded to the Court for review.

11 I -- I'm not naive, because I once sat where  
12 everyone out in the courtroom is and served as an associate  
13 in a large law firm and know many people spent many late  
14 lights working to get this case to where it is today, but if  
15 it's at all possible for those of you who sit at counsel  
16 table to stop and take a deep breath and perhaps let all the  
17 support folks get a good night sleep before you rush to try  
18 to get this order in for me to review I think that would be  
19 a welcome result for everyone. But I understand you'll  
20 press on as you think you must, but I must say I think that  
21 everyone could do with a good night sleep and we might end  
22 up with a better order than we would if we decide to try to  
23 draft it overnight.

24 But however you decide to do it and whenever you  
25 get it to me we'll look at it as soon as we possibly can.

Page 38

1           Thank you all for your efforts, congratulations on  
2 the outcome, have a good day.

3           (A chorus of thank you)

4           THE CLERK: All rise. This Court is adjourned.

5           (Proceedings concluded at 2:32 PM)

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Page 39

## 1                   I N D E X

## 2                   E X H I B I T S

3     PARTY	NO	DESCRIPTION	ID.	EVID.
4     RKJS	5	APA	--	24

5

6

## 7                   RULINGS

8		Page	Line
9	RKJS Motion to Reopen Auction	20	10
10			
11	Approval of Sale	36	18
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			

Page 40

1 C E R T I F I C A T I O N

2

3 I, Dawn South, certify that the foregoing transcript is a  
4 true and accurate record of the proceedings.

5

6 **Dawn South**

 Digitally signed by Dawn South  
DN: cn=Dawn South, o=Veritext,  
ou, email=digital@veritext.com,  
c=US  
Date: 2014.04.16 15:26:15 -04'00'

7

8 AAERT Certified Electronic Transcriber CET\*\*D-408

9

10 Veritext

11 330 Old Country Road

12 Suite 300

13 Mineola, NY 11501

14

15 Date: April 16, 2014

16

17

18

19

20

21

22

23

24

25